

Improving victims' experiences of the justice system - Scottish Government consultation



Response from Scottish Women's Aid

ABOUT

Scottish Women's Aid ("SWA") is the lead organisation in Scotland working towards the prevention of domestic abuse and plays a vital role in campaigning and lobbying for effective responses to domestic abuse. SWA is the umbrella organisation for 34 local Women's Aid organisations across Scotland; they provide practical and emotional support to women, children and young people who experience domestic abuse. The services offered by our members include crisis intervention, advocacy, counselling, outreach and follow-on support and temporary refuge accommodation.

Introduction

The victim support organisation members of the Victims Taskforce ("VTF"), including SWA, drew up and presented, in December 2020, the **Victims Voices**¹ paper to the VTF on victim-survivor experiences of the justice system. This paper, which was routinely referred to thereafter in the VTF papers and discussions, set out consistent themes identified by victims, witnesses and survivors from their experiences. The necessity of "being heard" and more importantly, responded to, was a consistent theme throughout all stages of survivors' experiences. The evidence in this paper should be placed at the heart of consultation findings.

SWA welcomes the Scottish Government's support for, and commitment to, the implementation of the recommendations from Lady Dorrian's Review Report ("Lady Dorrian's Review")² which are taken forward in the majority of proposals regarding sexual offending in this consultation.

For SWA it is important that the reforms to the system proposed for serious sexual offences will, in turn, be further developed and implemented to also support women involved in solemn prosecutions of domestic abuse offences. We are grateful to Rape Crisis Scotland for their work on these issues and we note that their response has informed some of our submission.

The practical principles of trauma informed practice identified, including improved communication, better protection for victims and ways of giving evidence should also be cascaded down into summary proceedings to improve the experiences and safety of women, children and young people experiencing domestic abuse.

SWA therefore look forward to working with the Scottish Government and our statutory justice partners to progress these improvements across the Scottish justice system.

¹ <https://www.gov.scot/binaries/content/documents/govscot/publications/minutes/2021/01/victims-taskforce-papers-december-2020/documents/paper-one-victims-voices---key-themes/paper-one-victims-voices---key-themes/govscot%3Adocument/Victims%2BTaskforce%2B-%2BSecretariat%2B-%2B8th%2BMeeting%2B-%2B2020-12-09%2B-%2BPaper%2B1%2B-%2BVictims%2BVoices%2BKey%2BThemes.pdf>

² <https://www.scotcourts.gov.uk/docs/default-source/default-document-library/reports-and-data/improving-the-management-of-Sexual-Offence-Cases.pdf?sfvrsn=6>

Chapter One: Victims' Commissioner

Question 1: To what extent do you agree or disagree that the Victims' Commissioner should be independent of the Scottish Government?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/**Strongly disagree**

Please give reasons for your answer.

SWA opposes the creation of such a post.

This matter has been the subject of a previous consultation and proposal for a Private Members' Bill in 2009 and 2010 and SWA's position at that time was that we were not persuaded the creation of a Victims' Commissioner would add value to the work already being done across Scotland to support victims of crime, particularly in the area of violence against women, and in fact, such an appointment will likely only duplicate work already being done and reduce the resources available for this work.

SWA's sister organisations in Wales, Northern Ireland and England, when queried about their experiences, have confirmed our reservations- underlining that the landscape and relationships in Scotland are distinctly different and that introducing a third party between the national strategic intermediaries would dilute our impact while draining much needed resources from the government purse.

In Scotland, the VAWG sector and victim support organisations, and those supported by them, benefit from a long history of positive and open engagement, as valued partners and stakeholders and critical friends, with the Scottish Government Ministers and officials, Scottish Parliament, and the various statutory agencies including Police Scotland, COPFS and SCTS.

Question 2: To what extent do you agree or disagree that the Victims' Commissioner should be a statutory role?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

See comments above

Question 3: To what extent do you agree or disagree that the Victims' Commissioner should be accountable to the Scottish Parliament?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

See comments above

Question 4: How do you think the Victims' Commissioner should be held accountable? Please select all that apply.

- a) annual report to be published and laid in the Scottish Parliament
- b) multi-year strategic plan to be published and laid in the Scottish Parliament
- c) other – please provide details

Please give reasons for your answer.

See comments above

Question 5: In your view, what should the main functions of the Victims' Commissioner be? Please select all that apply.

- a) raising awareness/promotion of victims' interests and rights

- b) monitoring compliance with the Victims' Code for Scotland, the Standards of Service for Victims and Witnesses and any relevant legislation
 - c) promoting best practice by the criminal justice agencies and those providing services to victims, including championing a trauma-informed approach
 - d) undertaking and/or commissioning research, in order to produce reports and make recommendations to the Scottish Government, criminal justice agencies and those providing services to victims
 - e) other – please provide details
- Please give reasons for your answer.

“Crime” is not a homogenous phenomenon, and designing and delivering services for victims-survivors requires a sophisticated and deep understanding of the nature of their experience, the intersections of their identities (race, gender, disability, sexual orientation, etc.), and the context of their communities. SWA cannot imagine a Commissioner or Commission that that would be better placed to advise strategic leadership regarding best practice than the survivor-led grass-roots services that have emerged over the last 5 decades, particularly in the Women's Aid network. We would also refer to our comments below in relation to a “trauma informed approach” in the context of VAWG.

Question 6: What do you think should be within the remit of a Victims' Commissioner for Scotland? Please select all that apply.

- a) the experience of victims in the criminal justice system
- b) the experience of victims in the civil justice system
- c) the experience of victims in relation to the Children's Hearings system
- d) the experience of victims resident in Scotland, but where the crime has taken place outwith Scotland
- e) other – please provide details

Please give reasons for your answer.

Question 7: What powers do you think the Victims' Commissioner should have? Please select all that apply.

- a) the power to carry out investigations into systemic issues affecting victims of crime
- b) the power to require persons to give evidence in the course of an investigation
- c) the power to make recommendations to the Scottish Government, criminal justice agencies and those providing services to victims
- d) the power to require persons to respond to any recommendations made to them (by the Victims' Commissioner)
- e) other – please provide details

Please give reasons for your answer.

See comments above

Question 8: To what extent do you agree or disagree that the Victims' Commissioner should be required to consult with victims on the work to be undertaken by the Commissioner?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

See comments above

Question 9: How do you think that engagement with victims should take place? Please select all that apply.

- a) advisory board, including victim representatives
- b) victims' reference group
- c) focussed consultations with victims

d) ad hoc engagement with victims
e) other – please provide details
Please give reasons for your answer.

See comments above

Question 10: Are there any specific groups of victims who you think the Victims' Commissioner should have a specific duty to engage with? If so, who are they and how should that engagement take place?

Yes – please provide details/No/Unsure

Please give reasons for your answer.

See comments above

Question 11: To what extent do you agree or disagree that the Victims' Commissioner should be required to consult with organisations that work with victims, on the work to be undertaken by the Commissioner?
Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

The consultation document is unclear as to how the Commissioner would represent, promote and engage equally with all victims' organisations across Scotland.

We note that page 20 of consultation paper states, "...*There are currently a number of victim and survivor reference groups operating in Scotland, facilitated by victim support organisations. These reference groups, in addition to other important functions, feed into the work of the Victims Taskforce to directly inform members of their experience and advise on what needs to change. The Commissioner, once appointed, **may wish** [emphasis added] to consider how they engage with these established groups to learn from their collective experience.*" This is far from establishing an obligation on any Victims' Commissioner to engage with long-established organisations in the VAWG sector such as SWA and our local Women's Aid groups across Scotland and does not engender confidence that such engagement would be underlined as necessary.

Question 12: Are there any other relevant bodies or organisations that may have an interest in the work to be undertaken by the Victims' Commissioner?

See comments above

Question 13: To what extent do you agree or disagree that the Victims' Commissioner should not have the power to champion or intervene in individual cases?
Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

The consultation states that the Commissioner would not be expected to intervene on behalf of any one individual. This may conflict with victims' expectations of the purpose of the Commissioner and raises the issue that perhaps what is needed is an Ombudsman-type of appointment. However, it would, nonetheless, be difficult to see how such a position would fit in with the criminal appeals process and the existing complaints processes and pathways already in place covering the actions of the police, the Crown, legal profession, SCTS and judiciary, remembering also that the SPSO can adjudicate in certain circumstances and PIRC can review complaints involving Police Scotland.

Question 14: Are there any other matters relating to the proposal to create a Victims' Commissioner for Scotland you would like to offer your views on?

No Comment

Chapter Two: Options to underpin trauma-informed practice and person-centred approaches

Question 15: Bearing in mind the general principles which are already set out in the 2014 Act, to what extent do you agree or disagree that a specific legislative reference to 'trauma-informed practice' as an additional general principle would be helpful and meaningful?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

We agree that a legislative reference to trauma-informed practice would be helpful. However, we would strongly emphasise that the system being trauma-informed is not the same as being domestic abuse informed. This is a crucial difference to bear in mind and in order to avoid women-blaming practices that only serve to re-victimise and re-abuse women, children and young people, it is necessary for all the actors in the system to receive training on, and understand domestic abuse-informed practice and how this builds on the key principles of trauma-informed practice to both improve outcomes for women, children and young people affected by domestic abuse and hold perpetrators to account^{3, 4, 5, 6}.

It is crucial that all those involved in the design and implementation of trauma-informed approaches and in the commissioning of training and awareness raising understand that in relation to VAWG, understandings of domestic abuse is rooted in a gendered analysis of this abuse, its causes, effects and impacts. This is particularly important in relation to domestic abuse, a form of gender-based violence, that relies on historical and systemic discrimination and structural inequalities experienced by women and children.

This trauma-informed approach must be consistent across the justice system and apply in both criminal and civil proceedings. Following from this, SWA's position is that, for the protection of women, children and young people and the furtherance of their Article 6 and Article 8 rights, such trauma informed practices and procedures recommended for the Children's Hearing System, including trauma informed training for sheriff, SCTS staff, solicitor, solicitor advocates and counsel, must also be extended to all civil proceedings where domestic abuse is raised as an issue, in particular for sheriff presiding over actions relating to PRRs, contact and residence raised under section 11 of the Children (Scotland) Act 1995 .

Question 16: To what extent do you agree or disagree that a specific reference to trauma-informed practice within the current legislative framework for the Standards of Service would be useful and meaningful? Please give reasons for your answer.

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

³ <https://education.gov.scot/media/kwilejb4/da-trauma-companion-pack.pdf>

⁴ <https://safeandtogetherinstitute.com/4-ways-the-concept-of-trauma-bonding-works-against-survivors/>

⁵ <https://vimeo.com/126501517> - Trauma and the Brain: Understanding abuse survivors responses

⁶ <https://safeandtogetherinstitute.com/4-ways-the-concept-of-trauma-bonding-works-against-survivors/> and <https://safeandtogetherinstitute.com/season-2-episode-10-trauma-informed-is-not-the-same-as-domestic-violence-informed-a-conversation-about-the-intersection-of-domestic-violence-perpetration-mental-health-addiction/>

As we have stated above, the issue central to these discussions is the nature of the criminal justice system itself and within that, the role that victims have and the status that they have, or, more importantly, do not have.

The Directive, which was incorporated into Scots law via the Victims and Witnesses Scotland Act 2014 (the 2014 Act), as amended by the 2015 Regulations , states that *“Victims of crime should be protected from secondary and repeat victimisation, from intimidation and from retaliation, should receive appropriate support to facilitate their recovery and should be provided with sufficient access to justice...”* The Standards of Service are based on the Directive and 2014 Act and are there to help explain how victims’ rights engage at each stage of the process.

While we agree with this proposal, greater attention must be paid to the Standards of Service, and in implementing the obligations imposed by these Standards and the Victims’ Code, by the various organisations tasked with complying and applying them. It would appear from the questions and issues raised with SWA and local Women’s Aid groups that the public is not aware of either the Standards or the Victims’ Code. Adherence to the Standards, enforcement of these is piecemeal and consequently victims’ rights are not fulfilled.

Under section 3C (Victims’ right to receive information) of the 2014 Act⁷, the police must ensure that *“as soon as reasonably practicable after a constable identifies a person who is or appears to be a victim in relation to an offence or alleged offence, a constable informs the person that the person may request, from any competent authority (a) a copy of the Victims’ Code for Scotland, and (b) information relating to the rights of victims.”* It is not clear that women experiencing domestic abuse are routinely, if at all, being given this information by the police; later in the process, when they are seeking information about the progress of the domestic abuse investigation, being advised by Women’s Aid of the existence of a Victims’ Code often appears to come as a surprise to women.

Given that the 2014 legislation implementing reforms intended to bring better standards for victims and witnesses has been in force for around seven years now, it is disappointing that the protection for victims and witnesses is still not being achieved and the implementation of the Act still found wanting, a point clearly made in paragraph 1.12 of Lady Dorrian’s Report.

A further issue is that the 2014 Act contains minimum standards, reflecting the Directive, and the Scottish justice system should endeavour to go further than this, instead of simply settling to meet and provide the lowest common denominator of response.

Therefore, to make any amendment to the current legislative framework for the Standards meaningful in relation to their expansion to include a specific reference to trauma informed practice, greater awareness of the Standards and Victims’ Code must be delivered to victims and the legislation should also provide a meaningful consequence for authorities that do not adhere to them. Action must be taken by the Scottish Government to, not only, raise awareness of the existence of the Standards and the Victims’ Code, but also actively promote the Standards and importantly, the

⁷ <https://www.legislation.gov.uk/asp/2014/1/crossheading/provision-of-information-to-victims>

Victims' Code, making the latter widely available, including in hard copy, across all areas where victims will engage with statutory and third sector agencies.

Question 17: To what extent do you agree or disagree that a legislative basis for the production of guidance on taking a trauma-informed approach would be useful and meaningful? Please give reasons for your answer.

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

See our response to Questions 15 and 16 above.

Question 18: To what extent do you agree or disagree that the Court should have a duty to take such measures as it considers appropriate to direct legal professionals to consider a trauma-informed approach in respect of clients and witnesses?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

The consultation, at page 26, notes that the 2014 Act applies to criminal justice agencies but not to other parties such as the defence. Giving the court such a duty would, hopefully, encourage practitioners in achieving a better understanding of gender-based abuse and in responding respectfully to vulnerable victims and witnesses, predicated, of course, on the Courts themselves having the appropriate understanding of these matters and responding appropriately.

Question 19: Should virtual summary trials be a permanent feature of the criminal justice system?

Yes/No/Unsure

Please give reasons for your answer.

SWA agree with this proposal, specifically in relation to domestic abuse cases- see our responses below to Questions 20, 21 and 22.

Question 20: If you answered yes to the previous question, in what types of criminal cases do you think virtual summary trials should be used?

Please give reasons for your answer.

SWA agree with this proposal, specifically in relation to domestic abuse cases- see our response to Questions 21 and 22 below.

Question 21: To what extent do you agree or disagree with the recommendation of the Virtual Trials National Project Board that there should be a presumption in favour of virtual trials for all domestic abuse cases in the Scottish summary courts?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

SWA fully agrees with the proposal, that this should be a legislative provision and support the recommendation from the Project Board's Report set out at page 29 of the consultation paper, namely "...that virtual trials should be considered as a default position for all domestic abuse cases in the Scottish summary courts with the creation of new designated courts within each sheriffdom to enable this."

In the face of overwhelming evidence that victims' experiences of court, especially criminal proceedings, are traumatic, the status quo chills reporting and nurtures witness attrition. Virtual trials have the potential to make women's and children's experiences safer, better supported and will greatly improve the quality of evidence and victims' access to justice.

Question 22: While removing vulnerable victims from the physical court setting is beneficial in the vast majority of cases, to what extent do you agree or disagree that virtual trials offer **additional** benefits to the ability to give evidence remotely by live TV link?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

We would reiterate the comments in the consultation paper, also noted above, that virtual trials will offer additional benefits

Given the gendered nature of domestic abuse, women and children are disproportionately disadvantaged by having to attend courts, especially when travelling significant distances. Women are more likely to need to use public transport possibly being used also by the accused, to have child care responsibilities, and to be engaged in precarious paid labour market activity. Attendance in a court, particularly one far from their home communities and with little regular public transport is a barrier to victims' access to justice and fair treatment.

Question 23: The existing powers in the Vulnerable Witnesses (Criminal Evidence) (Scotland) Act 2019 can be used to expand the categories of witnesses who are eligible under the Act to benefit from the presumption that their evidence be pre-recorded in advance of the trial. This includes evidence by commission and the use of a prior statement as evidence-in-chief, such as a Visually Recorded Interview. To what extent do you agree or disagree that these existing powers are sufficient to expand the use of the pre-recording of evidence of complainants of serious sexual offences?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer, including, if you disagree, what legislative change you consider is necessary.

The terms of section 3 of the 2019 Act⁸ appear straightforward in this respect but may need to be more explicit on the right for complainants in sexual crimes to pre-record their evidence in advance of trial. We would comment that this would allow the phased introduction of this presumption to cover complainants and witnesses in solemn cases involving domestic abuse.

Question 24: To what extent do you agree or disagree that Ground Rules Hearings should be extended to all child and vulnerable witnesses required to give evidence in the High Court, irrespective of the method in which their evidence is to be provided to the court?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

Lady Dorrian's Review notes at page 40, paragraph 2.21 "*Experience has shown that they have been successful in improving the experience of complainants and are working effectively. In light of that the Review Group is of the view that it is imperative that GRHs are now rolled out as a priority for all sexual offences cases in which the complainant is to give evidence irrespective of the method in which the evidence is to be provided to the court*" and the consultation states, on page 34 that "*This confirms the experience in other jurisdictions which has shown them to be effective in improving the experience of vulnerable witnesses by ensuring that cross-examinations are "more witness-friendly, focused, relevant and pared down than in conventional trials."*

⁸ <https://www.legislation.gov.uk/asp/2019/8/section/3>

Question 25: To what extent do you agree or disagree that the current legislative basis for court scheduling, as managed through the existing powers of the Lord President, is sufficient to inform trauma-informed practice?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer. If you disagree, what legislative provision would you like to see?

We support the RCS' position that current court scheduling practices, including the allocation of rape cases to floating trial diets, causes unnecessary delays, uncertainty and trauma for sexual crime complainers, meaning that a new and reformed approach to court scheduling is required for sexual offences, development of which should be undertaken as part of the proposed new, specialist sexual offence court.

Given the commitment and support of the Lord President and the Lord Justice Clerk to reforming criminal procedure, improving the position of victims and witnesses and introducing trauma-informed practice, we consider that the powers of the Lord President under the above legislation appear sufficient to inform trauma-informed practice, noting that Acts of Adjournal may be required to support this.

It is anticipated that instruction and guidance on how trauma-based approaches will be implemented in practice would be achieved through Practice Notes from the Lord President and Lord Justice Clerk, information in the Jury Manual and Benchbooks, and other resources from the Judicial Institute of Scotland, and also through judicial education. SWA looks forward to engaging with, and supporting the work of the SCTS and judiciary in these important reforms.

Question 26: Are you aware of any specific legislative changes which would assist in addressing the issues discussed around information sharing? If so, please detail these.

The consultation indicates specific problems for victims and witnesses retrieving information about their case, including the inability to access this digitally and support organisations having a similar issue.

Part of the solution to this is, as stated above, the appropriate application of the existing legislative provisions under the 2014 Act enabling victims to obtain information. This would go some way toward alleviating problems victims and witnesses are experiencing in this area. This is particularly relevant in relation to children and young people, as discussed in SWA's response to the Scottish Government's Children's Care and Justice Bill Consultation on Policy Proposals: *"Survivors routinely outline the importance of having information at all stages of the process of reporting abuse. This includes information about what to expect when reporting abuse, why something is happening, who is involved, reasons for the decisions made, and how they will be implemented."*⁹ They also want to have information as early on as possible in the process, a finding supported by Lady Dorrian's Review into the management of sexual offence cases. Young survivors say that information is important to help them feel prepared and in control. When they are excluded from information about them, young survivors say that this can feel unfair and scary. Young survivors highlight the fear caused by drop-off in information to them at crucial points in the process, including when a perpetrator is released¹⁰.

⁹ Everyday Heroes Justice report (2018) Everyday Heroes Justice report (2018) <https://everydayheroes.sps.ed.ac.uk/wp-content/uploads/2018/11/everyday-heroes-briefing2-Justice.pdf>

¹⁰, Everyday Heroes Justice report (2018)

Lady Dorrian's Review into the management of sexual offence cases sets out recommendations for information sharing in the children's hearings system, including broader information for complainers addressing how the system works and why information is restricted. We believe this approach would also be a helpful step for survivors of domestic abuse. The information should include information on possible outcomes of the hearings, and the implications for the victim and the child who has caused harm. Information should also signpost to support available. In line with Article 12 of the UNCRC, children and young people (including young survivors of domestic abuse) should be facilitated to meaningfully participate in designing any information materials created for young people coming into contact with the system.

Young women who experience abuse in their own intimate relationships experience no less traumatic abuse than adults: abusive, coercive and controlling behaviours are as present, pernicious, and impactful in the relationships of teenagers as they are in adults'. The experience of young survivors coming into contact with the justice system at this age is highly likely to have lasting repercussions on their confidence in reporting; young survivors disclose feeling alienated from the justice system and being less likely to report again if their early reporting experiences are negative.¹¹ Access to justice is limited for someone when access to information which may keep them safe and help their recovery is denied purely because of the age of the perpetrator. In balancing the rights and wellbeing of both young people involved, it is essential to recognise the long-lasting impact on young women of denying them information they are seeking for their own sense of safety."

We also note that reforms within the current Bail and Release from Custody (Scotland) Bill, specifically those of the Victim Notification Scheme relating to information on the release of prisoners, will enable the appropriate and timely provision of information about prisoner release to victims' organisations, to inform the support they provide to, and safety planning for, vulnerable victims.

Question 27: Are there any other matters relating to the options to underpin trauma-informed practice and person-centred approaches in the justice system you would like to offer your views on?

See our response above

Chapter Three: Special measures in civil cases

-Question 28: To what extent do you agree or disagree that the courts should have the power to prohibit personal cross-examination in civil proceedings when the circumstances in a particular case require this measure to be taken?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

-Question 29: To what extent do you agree or disagree that special measures should be available when required for all civil court hearings in Scotland, whether the hearings are evidential or not? Please give reasons for your answer.

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

-Question 30: Are there any other matters relating to special measures in civil cases that you would like to offer your views on?

¹¹, Everyday Heroes Justice report (2018) (ibid)

SWA has consistently called for the meaningful extension of the provisions of the Vulnerable Witnesses (Scotland) Act 2004 and subsequent 2014 Act, to be automatically available to vulnerable parties and witnesses in civil proceedings involving domestic abuse, specifically the cross-referencing into civil proceedings of the “deemed vulnerable witness” standard special measures automatically available to witnesses in domestic abuse cases under section 6 of the 2014 Act.

The Children (Scotland) Act 2020 contains provisions that, once commenced, will afford a certain degree of protection to women experiencing domestic abuse participating in section 11 cases under the 1995 Act. These provisions do not go far enough in conferring automatic rights to standard special measures in any section 11 evidential hearing or child welfare hearing. It does not make sense that women experiencing domestic abuse should be allowed automatic access to this protection in criminal proceedings but denied it in civil proceedings.

Section 4(3) of the 2020 Act inserts sections 11A and 11B into the 2004 Act and specifies circumstances where the court is to deem a person to be a vulnerable witness, irrespective of whether the person satisfies the definition of “vulnerable witness” in section 11(1) of the 2004 Act. In proceedings arising out of a children’s hearing (covered by the new section 11A of the 2004 Act), a person will be deemed to be a vulnerable witness where it is alleged in the statement of grounds that the person is the victim of specified conduct. Domestic abuse is qualified simply by the fact that the statement of grounds alleges that the person is the victim of domestic abuse

However, in proceedings where the court is considering making an order under section 11(1) of the 1995 Act (covered by the new section 11B of the 2004 Act), a person will be deemed to be a vulnerable witness if the person is protected by a civil protection order from conduct by a party to the proceedings, or where the person is the victim or complainant in respect of certain criminal offences committed or alleged to have been committed by a party to the proceedings.

Similar provision exists under section 8 of the Act to protect vulnerable parties in Child Welfare Hearings if they would be “deemed vulnerable” in terms of the test in section 11B above.

If a party does not qualify to be a “deemed vulnerable witness” they can only access standard special measures by applying to the court and satisfying the court that it is likely that they will suffer distress, that the special measure will reduce that distress and that there is no significant risk to the interests of justice.

Therefore, a woman experiencing domestic abuse only be considered automatically eligible to use standard special measures, firstly, in section 11 cases and then within those, only where she met the qualification of possessing a civil protection order or the perpetrator has been convicted of a specified criminal offence or is being prosecuted for such an offence. This excludes women who, for whatever reason, have not reported the abuse to the police or where there have been no criminal proceedings taken against the perpetrator, possibly due to issues around corroboration or a conviction made.

This is not in the interests of justice. A woman experiencing domestic abuse engaging in any civil proceedings, evidential or otherwise (be this, for example, an

application for a protective order as mentioned in the consultation paper, a section 11 application or participation in applications by the police for a DAPO), should automatically be deemed vulnerable and therefore automatically eligible for use of a supporter, screen and/or CCTV as appropriate.

This should be in addition to the further prohibitions and protections in the 2020 Act against cross-examination by a perpetrator, prohibitions and protections which we agree should also expanded to cover **any** civil proceedings involving domestic abuse.

We would also support RCS' call for these reforms to include protection for sexual offence complainers involved in civil proceedings relating to their experiences of sexual violence.

Chapter Four: Review of defence statements

Question 31: Do you support undertaking a review of the use of defence statements?

Yes/No/Unsure

Please give reasons for your answer.

We note the comments in Lady Dorrian's Review that the content of defence statements and their timing do not support the original intention behind these statements, namely to assist with the Crown's duty of disclosure, provide detail of the nature of the defence, an advance indication of the issues in dispute, and what this may involve for the complainant. If this provision is not working, clearly it requires addressed.

Question 32: If you answered yes to the previous question, how do you think this should be progressed to address the issues identified by Lady Dorrian's Review?

We do not have a view on this apart from observing that it does not appear possible to go as far as the similar procedure in England and Wales due to procedural differences and that the impact of revised timescales on the defence will require consideration.

Question 33: Are there any other matters relating to a review of defence statements that you would like to offer your views on?

No comment

Chapter Five: Anonymity for complainers in sexual offence cases

We note from the consultation paper that Scotland differs from the remainder of the United Kingdom (and many countries around the world) in that there is no automatic legal right to anonymity for complainers in sexual offence cases in Scots law. This is obviously an anomaly and an issue that will impact on reporting so therefore agree with the proposal in Lady Dorrian's Review, for the reasons set out there and the rationale for complainant anonymity set out in the consultation paper, that legislation should be introduced to address this anomaly.

Question 34: Which one of the following best describes your view on the point in the criminal justice process when any automatic right to anonymity should take effect?

a) when an allegation of a sexual offence is made

b) when a person reports an alleged sexual offence to a police constable

c) when an accused person is formally charged by the police with a sexual offence

- d) when criminal proceedings for a sexual offence first call in court
e) other – please provide details
Please give reasons for your answer.

Protection should be available at the earliest opportunity including situations where neither the victim nor any other person reports the matter to the police.

While we have therefore selected Option A, the concept of anonymity within the “criminal justice process” from the time that an allegation is made requires further explanation and exploration, particularly as to how this would operate in practice. Where neither the woman nor any other party reports a sexual offence to the police, there has been no engagement with the criminal justice system, and no information about her should have entered the criminal justice system, so it is not clear at what stage the “allegation” would be made, since seeking support from a Rape Crisis Centre does not involve the victim making “an allegation.”

It may be that proposal is intended to cover the situation where a victim has undertaken a confidential Forensic Medical Examination (FME) at a Sexual Assault Response Coordination Service (SARCS), and the healthcare professional is required to disclose the rape to the police because the victim or others are at risk of further harm.¹² Nonetheless, clarity on this matter is needed.

Question 35: Which of the following options describes the offences that you consider any automatic right of anonymity should apply to? Please select all that apply.

a) offences contained at section 288C of the Criminal Procedure (Scotland) Act 1995

b) intimate images offence contained at section 2 of the Abusive Behaviour and Sexual Harm (Scotland) Act 2016

c) offences contained in the Protection of Children and Prevention of Sexual Offences (Scotland) Act 2005

d) other – please provide details

Please give reasons for your answer.

Noting the comments in the consultation paper on the matter, we support all the above, with the addition of section 52 of the Civic Government (Scotland) Act 1982 and a “catch all” provision to cover any case with a significant sexual element.

Question 36: Which one of the following best reflects your view on when any automatic right of complainer anonymity should end?

a) upon the death of the complainer

b) no automatic end point

c) other - please provide details

Please give reasons for your answer.

The right of anonymity should be lifelong for a complainer

Question 37: To what extent do you agree or disagree that the complainer should be able to set their anonymity aside?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

¹² <https://www.rapecrisisscotland.org.uk/news/blog/what-is-the-forensic-medical-services-act-and-what-does-it-mean-for-survivors/>

The complainant must be given control over and capacity to waive anonymity; how this is achieved and the processes and tests in place to safeguard women's safety will require exploration.

As the consultation notes, it also has to be recognised that there is, indeed, *"a balance to be struck between, on the one hand, avoiding placing unnecessary administrative and cost burden on a victim of a sexual offence who wishes to tell their story and, on the other hand, ensuring that they have genuinely consented to waive their anonymity"*, noting that there may be circumstances where it may be unclear whether a complainant has, in fact, consented to waive their right to anonymity.

There are other issues to be considered, such as

- when this could happen- it would not be appropriate for this to happen during the trial or pre-sentence, so could this theoretically be done post-conviction or post –sentencing?
- Whether the media or any other third party would require written permission of the victim to disclose the victim's identity? This would be preferable.
- What protective procedures (that respect women's agency) might be needed to ascertain that waivers are not a product of coercion, a possible issue in relation to cases where the rape has occurred in the context of domestic abuse
- Ensuring women have a clear understanding of the implications of waiving anonymity in the media and protections for women who do so
- The importance of contempt proceedings being brought against media outlets or persons who disclose the identity of a complainant

Question 38: If complainants are to be given the power to set their anonymity aside, which one of the following best reflects your view on how they should be able to do this?

- a) unilaterally by consent of the complainant
 - b) following an application to the court by the complainant
 - c) other – please provide details
- Please give reasons for your answer.

It could be considered as further undermining women's autonomy if they were required to go to the court and ask permission before saying in public that they experienced sexual violence and this also suggests that where such a requirement was introduced, then women who discussed their experiences online, or through any other medium would face some form of sanction from the court and possibly prosecution, which would be unacceptable.

Question 39: To what extent do you agree or disagree that children should be able to set any right to anonymity aside?

Strongly agree/Somewhat agree/Neutral/**Somewhat disagree**/Strongly disagree
Please give reasons for your answer.

If this was to happen, it would have to be in line with UNCRC principles, namely that setting aside anonymity was in best interests of the child, meaning a process of assessing these matters would have to be put in place. However, it is hard to see how it would ever be considered in a child's best interests to be publicly named as a victim of sexual violence when we know that information will be available online more or less permanently, even taking the availability of the "Right To Be Forgotten" application process into account.

Question 40: If children are to be given a power to set any right of anonymity aside, to what extent do you agree or disagree that additional protections should be required prior to doing so, for example, an application to the court to ensure there is judicial oversight?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

Question 41: If children are to be given a power to set any right of anonymity aside, to what extent do you agree or disagree that there should be minimum age below which a child cannot set their anonymity aside?

Strongly agree/Somewhat agree/**Neutral**/Somewhat disagree/Strongly disagree
Please give reasons for your answer, including (if you agree) what you think this age should be.

Question 42: To what extent do you agree or disagree that the court should have a power to override any right of anonymity in individual cases?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/**Strongly disagree**
Please give reasons for your answer, including (if you agree) your view on the circumstances in which this power should be available.

We support RCS' position that anonymity should not be set aside by the court for the purposes of securing defence evidence, nor should it be set aside if the survivor withdraws from proceedings or there is a not guilty/proven verdict.

Question 43: To what extent do you agree or disagree that any right of anonymity should expire upon conviction of the complainant for an offence against public justice?

Strongly agree/Somewhat agree/**Neutral**/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

Question 44: Which one of the following best reflects your view of the level of maximum penalty that should apply to a breach of any right of anonymity?

- a) up to 2 years' imprisonment and/or an unlimited fine
- b) an unlimited fine
- c) up to 12 months' imprisonment and/or a fine of up to £10,000
- d) other - please provide details**

Please give reasons for your answer.

Depending on whether the breach is prosecuted under solemn or summary proceedings, a) and b) should apply in solemn proceedings and c) in summary proceedings.

Question 45: To what extent do you agree or disagree that there should be statutory defence(s) to breaches of anonymity?

Strongly agree/Somewhat agree/**Neutral**/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

Question 46: If you agree that there should be statutory defence(s) to breaches of anonymity, which of the following best reflects your view of the defence(s) that should operate? Please select all that apply.

- a) adopt the model of the 1992 Act in England, Wales and Northern Ireland
- b) a 'reasonable belief' defence
- c) other – please provide details

Please give reasons for your answer.

No comment

Question 47: Are there any other matters relating to anonymity for complainers in sexual offence cases that you would like to offer your views on?

No comment

Chapter Six: Introduction of independent legal representation for complainers in sexual offence cases

Question 48: To what extent do you agree or disagree that there should be an automatic right to independent legal representation for complainers when applications under section 275 to lead sexual history or character evidence are made in sexual offence cases?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

CEDAW highlights that justice systems should be accessible to women and accessibility requires the availability of “*free or low-cost legal aid, advice and representation in judicial and quasi-judicial processes in all fields of law*”¹³. The Istanbul Convention states “*Parties shall provide for the right to legal assistance*”.¹⁴ International best practice on legal representation for victims of crime is contained in the non-binding UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. These guidelines call for states to provide “*legal aid, advice and court support services in all legal proceedings to female victims of violence in order to ensure access to justice and avoid secondary victimization*”.¹⁵

The justice system should take a victim-centred approach and introduce a trauma-based approach to support for victims. In the interests of justice, recognising recent case law, the previous work by RCS on this issue, the reasons set out in Lady Dorrian’s Review and the consultation, including the need to respect a complainer’s Article 8 rights, we fully support the proposal above. Scotland should also go further and follow international best practice by introducing a right to legal representation for all victims of gender-based violence, including domestic abuse.

Question 49: To what extent do you agree or disagree that the complainer should have the right to appeal a decision on a section 275 application?

Strongly agree/Slightly agree/Neutral/Slightly disagree/Strongly disagree
Please give reasons for your answer.

See our response to Question 48

Question 50: To what extent do you agree or disagree that a right to independent legal representation for complainers should apply during any aspect of criminal proceedings in respect of applications under section 275 (including where an appeal is made)? **Strongly agree**/Slightly agree/Neutral/Slightly disagree/Strongly disagree
Please give reasons for your answer.

¹³ CEDAW General Comment 33 on Access to Justice, UN. Doc CEDAW/C/GC/33, para36
<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsldCrOIUTvLRFDjh6%2fx1pWCd9kc8NuhsZOT1QuzhrDy1rlpOgSyxJmK%2fSo2p3MpTl8XVX726sFstlDNUt3ltpYxbPx0ZXE2HODywdPg5cvoO>

¹⁴ Istanbul Convention, Article 57,
<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168008482e>

¹⁵ UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para 55 https://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidelines_on_access_to_legal_aid.pdf

See our response to Question 48

Question 51: In exceptional cases, section 275B (2) provides that an application may be dealt with after the start of the trial. To what extent do you agree that independent legal representation should apply during this aspect of the proceedings?

Strongly agree/Slightly agree/Neutral/Slightly disagree/Strongly disagree

Please give reasons for your answer.

See our response to Question 48

Question 52: To what extent do you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid?

Strongly agree/Slightly agree/Neutral/Slightly disagree/Strongly disagree

Please give reasons for your answer.

See our response to Question 48

Question 53: If you agree that independent legal representation for complainers in respect of the applications under section 275 should be funded by legal aid, how should this be provided?

a) under civil ABWOR

b) under criminal ABWOR

c) other – please provide details

Please give reasons for your answer.

We do not have a particular view as to how this should be provided via legal aid and whether one legal aid route is simpler and more straightforward to access than the other, except to emphasise that whatever mechanism is chosen, it must ensure that legal aid funding is indeed provided in the simplest and most expeditious fashion.

Question 54: To what extent do you agree or disagree that these time periods should be adjusted to provide additional time for the complainer to consider the application and effectively implement their right to independent legal representation prior to trial?

Strongly agree/Slightly agree/Neutral/Slightly disagree/Strongly disagree

Please give reasons for your answer.

See our response to Question 48

Question 55: Are there any other matters relating to independent legal representation for complainers in sexual offence cases that you would like to offer your views on?

No comment

Chapter Seven: Specialist court for sexual offences

Question 56: To what extent do you agree or disagree that a specialist sexual offences court should be created to deal with serious sexual offences including rape and attempted rape?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

We again note the comments in the consultation paper and Lady Dorrian's Review, particularly the role of the judiciary in delivering a better experience for complainers in sexual offence cases.

Lady Dorrian's Review sets out in Chapter 3 (page 48, at paragraph 3.13), the principal arguments in support of specialism. It also notes other, compelling reasons for establishing this court including issues in ensuring that the "rape shield" provisions of sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 are properly adhered to by trial courts; the egregious example of bad practice addressed by the court in the appeal case of *McDonald v HM Advocate*¹⁶ and the example described of the success of a dedicated team of Preliminary Hearing judges overseeing and taking greater roles in case management.

We also note that such a court would better encourage the development of systems, practices and policies through a "trauma-informed lens" to the benefit of, not only complainers in safeguarding their welfare, but also that of judiciary, court staff and specialist practitioners.

Question 57: To what extent do you agree or disagree that, if a new specialist sexual offences court is created, it should be - as recommended by Lady Dorrian's Review - a new court for Scotland, separate from the High Court or the Sheriff Court?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

This specialist sexual offences court, as recommended by Lady Dorrian's Review, would be a court where *"... all those involved is a court where all those involved in the operation of the court - for example, the judiciary, prosecutors, defence lawyers - are specially trained for dealing with sexual offences cases in a trauma informed-manner and all the procedures are aligned with the specific needs that arise in dealing with serious sexual offences (including pre-recording of complainers' evidence and the right of complainers to independent legal representation as discussed previously). The recommended model of specialist court also has bespoke jurisdiction and sentencing powers."*

A stand-alone court would also support the training in trauma-based approaches, the cultivation of specific skills and expertise required for the management of these cases, encourage better efficiency in managing cases, therefore improving the experience of complainers.

Question 58: If you disagree that the specialist court should be a new separate court for Scotland, where do you consider it should sit?

- a) within the High Court
- b) within both the High Court and the Sheriff and Jury Court
- c) other – please provide details

Please give reasons for your answer.

No comment

Question 59: To what extent do you agree or disagree that, if a specialist court is to be created, it should have jurisdiction to hear cases involving charges of serious sexual offences including rape as well as non-sexual offences which appear on the same indictment (for example, assault)?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

¹⁶ 2020] HCJAC 21 <https://www.scotcourts.gov.uk/docs/default-source/cos-general-docs/pdf-docs-for-opinions/2020hcjac21.pdf?sfvrsn=0>

Please give reasons for your answer.

We would comment that jurisdiction to hear cases involving charges of serious sexual offences, including rape, as well as non-sexual offences which appear on the same indictment, means that the court could theoretically hear cases involving domestic abuse. Therefore, it will be important that the training for all involved in this court specifically includes an understanding of all aspects of domestic abuse offending, including the role of coercive control.

Question 60: If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree with Lady Dorrian's Review that it should have a maximum sentencing power of 10 years' imprisonment and the ability to remit cases to the High Court for consideration of sentences longer than 10 years?

Strongly agree/Somewhat agree/Neutral/**Somewhat disagree**/Strongly disagree
Please give reasons for your answer.

We do not agree with the proposed maximum sentencing powers above and consider that the maximum sentencing powers should reflect those in the High Court for the same offences, noting the issues raised in this regard in the consultation paper and Lady Dorrian's Review, namely

- Creating a specialist court dealing with offences of rape that had maximum sentencing powers lower than that which can currently be imposed by existing non-specialist courts hearing those cases could potentially undermine the credibility of the specialist sexual offences court.
- Imposing a limit on the sentencing of serious sexual offences, beyond any already existing in legislation for specific offences, could be perceived as downgrading the seriousness of sexual offences.
- A sentencing limit of 10 years' imprisonment in the specialist court potentially creates a two-tier system; cases that continued to be prosecuted in the High Court would be perceived to be subject to a higher maximum sentence than those prosecuted in the specialist court.

Question 61: If you disagree that a specialist court should have a sentencing limit of 10 years' imprisonment, what do you consider the limit should be?

a) unlimited

b) other – please provide details

Please give reasons for your answer.

See our comments above

Question 62: If a specialist sexual offences court distinct from the High Court or the Sheriff Court were to be created, to what extent do you agree or disagree that it should be presided over by sheriffs and High Court judges?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

Please give reasons for your answer.

The issue is rather one of the required training, preparation, and accountability of those presiding rather than High Court versus Sheriff status.

Question 63: If you answered disagree to the previous question, who do you think should preside over the court?

a) sheriffs only

b) High Court judges only

c) other – please provide details

Please give reasons for your answer.

See our answer to Question 62

Question 64: If a specialist sexual offences court distinct from the High Court and Sheriff Court were to be created, to what extent do you agree or disagree that the requirements on legal practitioners involved in the specialist court should be match those of the High Court?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

Question 65: To what extent do you consider that legislation should require that legal professionals working in a specialist court should be specially trained and trauma informed? Please give reasons for your answer, including any specific training requirements that you think should be introduced

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree

We note Lady Dorrian's Review highlighted that legal practitioners appearing in the specialist court should match the requirements, standards and rigorous training on aspects of court procedure and practice imposed on those who appear in the High Court, in addition to trauma-informed training, reflecting the severity of cases heard in the specialist court. This also means prosecutions will be conducted by Advocate Deputes, who are advocates or solicitor advocates appointed by the Lord Advocate and the defence conducted by advocates

Question 66: Are there any other matters relating to the potential creation of a specialist court for serious sexual offences you would like to offer your views on?

No comment

Chapter Eight: Single judge trials

Question 67: To what extent do you agree or disagree that the existing procedure of trial by jury continues to be suitable for the prosecution of serious sexual offences including rape and attempted rape?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/**Strongly disagree**
Please give reasons for your answer.

SWA was a joint signatory in the 2020 letter to the Scottish Parliament seeking emergency use of single judge trials to end the COVID backlog of solemn cases awaiting prosecution¹⁷ and we supported the position advanced by RCS in their CEO Briefing of 2020 on the same issue¹⁸

We note the discussion undertaken in Lady Dorrian's Review on this important matter at Chapter 5 of that paper, in particular, paragraph 5.6 "... *It remains the case that juries seem to return a significantly higher rate of acquittal in sexual offences than in other crimes. Scottish Government figures¹³⁵ suggest that the conviction rate for rape is lower in Scotland than for any other crime. The conviction rate for all crime in 2018-19 was 87%. For rape and attempted rape, it was 47%. These figures of course both relate only to cases which meet the threshold for prosecution. They indicate that the conviction rate for rape and attempted rape has been the lowest of all crimes in each of the last ten years. The figures cannot simply be ignored. The disparity is such that it cannot simply be explained away by poor prosecutorial decision making, rogue cases or the like.*"

¹⁷ [https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/20200420_VictimsOrganisationstoMSPs\(1\).pdf](https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/20200420_VictimsOrganisationstoMSPs(1).pdf)

¹⁸ <https://www.rapecrisisScotland.org.uk/resources/Briefing---Jury-trials---2020.pdf>

SWA support the consideration on removing juries and introducing single judge trials for serious sexual offences for rape cases in terms of the arguments in favour of this position set out in Lady Dorrian's Review carefully noting the arguments against also set out in the paper, on pages 91 and 92.

Question 68: If you have answered 'neutral' to the previous question, what further evidence, research or information would assist you?

No comment

Question 69: To what extent do you agree or disagree that trial before a single judge, without a jury, would be suitable for the prosecution of serious sexual offences including rape and attempted rape?

Strongly agree/Somewhat agree/Neutral/Somewhat disagree/Strongly disagree
Please give reasons for your answer.

See our response above

Question 70: If you have answered 'neutral' to the previous question, what further evidence, research or information would assist you?

Question 71: What do you consider to be the key potential benefits of single judge trials for serious sexual offences? Please select all that apply.

- a) **removal of potential bias of the jury**
- b) **removal of concerns around rape myths**
- c) **greater efficiency of court process including reduced trial length**
- d) **improved court experience of the complainer**
- e) **greater public confidence in the decision making, including the application of legal principles**
- f) other – please provide details
- g) I do not believe that judge-only trials convey any benefits for serious sexual offences

Please give reasons for your answer.

See our response above

Question 72: What do you consider to be the key concerns and challenges of single judge trials for serious sexual offences? Please select all that apply.

- a) less public confidence in the justice system
- b) **lack of diversity reflected in the pool of decision makers**
- c) removal of civic participation in the criminal justice system
- d) undermining the use of juries for non-sexual offences
- e) other – please provide detail
- f) I do not have any concerns

Please give reasons for your answer.

See our response above

Question 73: If you highlighted concerns and challenges in the previous question, which of the following safeguards do you think could be put in place to mitigate these. Please select all that apply.

- a) **evaluation of requirement for written judgments to be prepared**
- b) **specific training for judges**
- c) other – please provide details

d) none, I don't think there are any safeguards that could be put in place
Please give reasons for your answer.

We are aware that, as the consultation paper and Lady Dorrian's Review state, judges themselves are not immune to prejudice or unconscious bias. Therefore the safeguards mentioned above will be necessary to mitigate concerns. Also, we would support the further exploration of the suggestions around a panel of judges or a combined judge and lay panel configuration, as per paragraphs 5.28 and 5.29.

Question 74: What additional evidence and information do you think would be useful to assess the question of the role of juries in the prosecution of serious sexual offence cases?

No comment

Question 75: Lady Dorrian's Review recommended consideration of a time limited pilot of single judge trials for offences of rape, do you have any views on how such a pilot could operate?

SWA support the implementation of a pilot of single judge trials for offences of rape and sexual offending to overcome concerns around the operation of such proceedings in practice. We would be happy to participate in and support this work in relation to trials that involved rape and sexual offending committed in the context of domestic abuse, particularly in relation to raising awareness of judiciary, SCTS personnel, COPFS and legal professionals.

Question 76: Are there any other matters relating to single judge trials that you would like to offer your views on?

No comment

Chapter Nine: Impact Assessments

Question 77: Do you have any views on potential impacts of the proposals in the chapters of this consultation on human rights? Please provide details, making reference to the specific proposal or proposals to which your comments relate

Yes/No/Unsure.

We consider that the proposals generally will have a positive impact on the human rights of women, children and young people experiencing rape and sexual assault, including in the context of domestic abuse. Expanding the proposals around vulnerable witnesses in civil proceedings specifically to include those experiencing domestic abuse will add to this protection.

Question 78: The Equality Act 2010 sets out nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation
Do you have any views on potential impacts of the proposals in the chapters of this consultation on equalities and the protected characteristics set out above?

Yes/ No/ Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

See our response to Questions 22 and 77 above

Question 79: Do you have any views on potential impacts of the proposals in the chapters of this consultation on children and young people as set out in the UN Convention on the Rights of the Child (UNCRC)?

Yes/ No/ Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

See our response to Question 77 above

Question 80: Do you have any views on potential impacts of the proposals in the chapters of this consultation on socio-economic equality?

Yes/ No /Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Women's poverty and social exclusion as a consequence of domestic abuse is well-documented, along with the disruption and trauma visited on their lives by not only the abuse, but also as participation as complainers in criminal proceedings. Taking positive steps to limit delays, provide better information on proceedings, communication about the process, more informed responses and complainers feeling part of the process and that they are relevant to them will go some way toward supporting women rebuild their lives. See also our response to Question 22.

Question 81: Do you have any views on potential impacts of the proposals in the chapters of this consultation on communities on the Scottish islands?

Yes/ No/ Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

Particular attention must be paid to the provision of, and access to, evidence suites and facilities for pre-recording of evidence and taking of evidence on commission; use of case management measures including Ground Rules Hearings and that special measures and commensurate facilities in civil and criminal proceedings are widely and timeously available. Similarly, access to appropriately trained, legal-aid-funded lawyers to allow complainers access to independent legal representation to oppose section 275 proceedings must be available, noting, for the reasons stated above, that such representatives must also have an appropriate understanding and training in relation to domestic abuse.

The trauma-informed training must similarly be widely available to all relevant SCTS staff, COPFS personnel and judiciary; the pool of these suitably trained and trauma aware professionals, and, most importantly, judiciary available to preside over these proceedings, must be wide enough and flexible enough to ensure that personnel and judiciary are available locally but if for any reason they are not, then there is an appropriate "pool" from which personnel and judiciary can be appointed.

Question 82: Do you have any views on potential impacts of the proposals in the chapters of this consultation on privacy and data protection?

Yes/ No/ Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

We would comment that information sharing and data sharing should not involve the inappropriate sharing of victims and witnesses' information to other services without their consent and this is particularly relevant in relation to sharing of such information for the purposes of promoting referrals to restorative justice services.

Question 83: Do you have any views on potential impacts of the proposals in the chapters of this consultation on businesses and the third sector?

Yes/ No/ Unsure

Please provide details, making reference to the specific proposal or proposals to which your comments relate.

We would envisage an increase in the call for services and support provided by local Women's Aid groups in relation to offences where domestic abuse was also an issue and in their support and advocacy function in relation to accessing special measures and participation in civil and criminal proceedings

Question 84: Do you have any views on potential impacts of the proposals in the chapters of this consultation on the environment? Please provide details, making reference to the specific proposal or proposals to which your comments relate

Yes/ No/ Unsure.